



WHAT YOU NEED TO KNOW ABOUT CONTRACTS

WELCOME

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“There are known knowns. These are things we know that we know.

There are known unknowns. That is to say, there are things that we know we don't know.

But there are also unknown unknowns. There are things we don't know we don't know.”

-Donald Rumsfeld

LEARNING OBJECTIVES

- ▶ Definition of a Contract
- ▶ Required Elements
- ▶ Common Findings
- ▶ Helpful Tips

DEFINITION OF A CONTRACT



CONTRACT DEFINITION

- ▶ A contract is an agreement to do or not to do a certain thing.
- ▶ It gives rise to an obligation or legal duty enforceable in an action at law.

REQUIRED ELEMENTS OF A CONTRACT



REQUIRED ELEMENTS

- ▶ Parties
- ▶ Term
- ▶ Consideration
- ▶ Scope and deliverables
- ▶ Terms and conditions
- ▶ Signature by a person for each party who is authorized to bind that party

COMMON FINDINGS



PROGRAMMATIC REQUIREMENTS

[SCOPE & DELIVERABLES; TERMS & CONDITIONS]

Some examples of missing or incorrect programmatic requirements include:

- ▶ Registered Dietitian roles and responsibilities
- ▶ Evidence-based program criteria
- ▶ Durational limits
- ▶ Eligibility criteria

22 California Code of Regulations (CCR) 7634.3; CDA Program Memo 10-19

PROGRAMMATIC REQUIREMENT TIPS

- ▶ Review California Department of Aging's (CDA) Contract Summary of Changes for updates to applicable laws and requirements
- ▶ Boost communication between AAA contract staff and AAA program staff
- ▶ Consult with CDA

FISCAL REQUIREMENTS

[SCOPE & DELIVERABLES; TERMS & CONDITIONS]

Some examples of missing or incorrect fiscal requirements include:

- ▶ Match requirements
- ▶ Max reimbursement amount for indirect costs
- ▶ Identifying and separating funding categories and line items
- ▶ Due dates for submission of Expenditure Reports and Request for Funds
- ▶ Budget

CDA Standard Agreement, FY 2017-2018, Exhibit B; 22 CCR 7318

FISCAL REQUIREMENT TIPS

- ▶ Review CDA's Contract Summary of Changes for updates to applicable laws and requirements
- ▶ Boost communication between AAA contract staff and AAA fiscal staff
- ▶ Develop written fiscal policies and procedures
- ▶ Consult with CDA

CONTRACT COMPLIANCE

[TERMS & CONDITIONS]

AAAs are not monitoring service providers to ensure full contract compliance within 120 days of the beginning date of the contract

CONTRACT COMPLIANCE TIPS

- ▶ Discuss performance goals/expectations with service provider prior to execution of contract
- ▶ Develop evaluation tools and procedures for monitoring performance
- ▶ Schedule performance review(s) within 120 days of the beginning date of the contract

SUBCONTRACTOR VERSUS VENDOR

[TERMS & CONDITIONS, PARTIES]

▶ Subcontractor:

- ▶ Provides goods or services
- ▶ Determines eligibility
- ▶ Performance is measured
- ▶ Responsible for programmatic decision making

▶ Vendor:

- ▶ Sells goods or services to the contractor or subcontractor
- ▶ Provides similar goods or services to many different purchasers

CDA Standard Agreement, FY 2017-2018, Exhibit D, Article 1, A(12), (14)

ACTIVITY



ACTIVITY QUESTION #1

Use the following statements to determine if the provider is a vendor or subcontractor:

- ▶ My company, ABC Company, has a contract with the AAA for producing nutritious meals.
- ▶ I submit a monthly invoice to the AAA for payment. The AAA does not require me to submit a budget.

Who am I?

ACTIVITY ANSWER #1

Vendor

ACTIVITY QUESTION #2

Use the following statements to determine if the provider is a vendor or subcontractor:

- ▶ My company, ABC Company, has a contract with the AAA for Personal Care, Homemaker and Chore services.
- ▶ The AAA refers inquirers to me for determining eligibility, type of services and number of service units for the client.

Who am I?

ACTIVITY ANSWER #2

Subcontractor

MULTI-YEAR CONTRACTS

[SCOPE & DELIVERABLES; TERMS & CONDITIONS]

“Multi-Year Contracts and/or Contract Extensions” are unallowable for Older Americans Act programs

Examples of multi-year contracts:

- ▶ Contracts specifying a period longer than one year
- ▶ Contracts specifying allowance of “contract extensions”

MULTI-YEAR CONTRACTS TIPS

- ▶ Contracts are limited to a one-year period
- ▶ Contracts may be renegotiated and renewed up to three additional one-year periods
- ▶ Specify contract renegotiation and terms in the Request for Proposal (RFP)

SCOPE OF WORK

[SCOPE & DELIVERABLES]

Contracts are missing service units for services to be performed

22 CCR 7354(b)(8); 22 CCR 7364

SCOPE OF WORK TIPS

- ▶ Review Data Dictionary for definition of unit measurements
- ▶ Include minimum number of service units in contract
- ▶ Consult with CDA

22 CCR 7354(b)(8); 22 CCR 7364

FUNDING LANGUAGE

[SCOPE & DELIVERABLES; TERMS & CONDITIONS]

Contracts are missing required
funding language

22 CCR 7354; 22 CCR 7364

FUNDING LANGUAGE TIPS

- ▶ Include the following language from the California Code of Regulations (CCR):
 - ▶ If service levels are not being met, then the budget may be reduced
 - ▶ Funding for the contract is contingent upon the availability of State and federal funds

22 CCR 7354; 22 CCR 7364

LOBBYING

[TERMS & CONDITIONS]

Contracts are missing language that no contract funds shall be used to pay the salary or expenses for anyone who is lobbying

CDA Standard Agreement, FY 2017-2018, Exhibit D, Article II, O; 22 CCR 7364(a)(2)

45 CFR 75.450

LOBBYING TIPS

- ▶ Refer to the CDA Standard Agreement, Exhibit D
- ▶ Review the California Code of Regulations (CCR) and Code of Federal Regulations (CFR)
- ▶ Consult with CDA

CDA Standard Agreement, FY 2017-2018, Exhibit D, Article II, O; 22 CCR 7364(a)(2); 45 CFR 75.450

FOCAL POINTS

[SCOPE & DELIVERABLES; TERMS & CONDITIONS]

Contracts are missing identification
of focal points

FOCAL POINTS TIPS

- ▶ The AAA is considered a focal point
- ▶ Identify a group of focal points for comprehensive service delivery in the Planning and Service Area
- ▶ Specify focal points in contracts
- ▶ Review the CCR

CONTRACTS IN EXCESS OF \$100,000

[TERMS & CONDITIONS]

Contracts are missing the requirements applicable to contracts in excess of \$100,000

CDA Standard Agreement, FY 2017-2018, Exhibit D, Article II, I

CONTRACTS IN EXCESS OF \$100,000

If the contract exceeds \$100,000, the service provider needs to follow these laws/requirements:

- ▶ Clean Air Act
- ▶ Federal Water Pollution Control Act
- ▶ Environmental Protection Agency Regulations
- ▶ State Contract Act
- ▶ Unruh Civil Rights Act

CDA Standard Agreement, FY 2017-2018, Exhibit D, Article II, I

TYPES OF SOLICITATIONS

[SCOPE & DELIVERABLES, TERMS & CONDITIONS]

- ▶ Competitive
- ▶ Noncompetitive

22 CCR 7352; 22 CCR 7360

COMPETITIVE AWARDS

[SCOPE & DELIVERABLES; TERMS & CONDITIONS]

- ▶ Informal

- ▶ Formal

INFORMAL COMPETITION SMALL CONTRACTS

- ▶ Not over \$100,000 in the aggregate
- ▶ Must obtain price quotes from qualified sources

22 CCR 7352(g)

SMALL CONTRACTS TIPS

- ▶ Contracts cannot be split into smaller contracts of less than \$100,000 to circumvent the RFP process
- ▶ It is necessary to maintain the following documentation:
 - ▶ Documentation showing that aggregated program funding is under \$100,000
 - ▶ Price quotes from qualified sources

FORMAL COMPETITION LARGE CONTRACTS

- ▶ Over \$100,000 in the aggregate
- ▶ Must follow the RFP process

22 CCR 7352(g)

OVERALL RFP PROCESS

- ▶ Planning and Preparation
- ▶ Publicity of RFP
- ▶ Proposal Submission
- ▶ Proposal Evaluation
- ▶ Intent to Award
- ▶ Protest and Protest Resolution
- ▶ Award of Contract

22 CCR 7352 to 7364; CDA Standard Agreement, FY 2017-18, Exhibit D, Article V, M.

LARGE CONTRACTS TIPS

- ▶ Follow the RFP process
- ▶ Review applicable laws and regulations
- ▶ Consult with CDA

AWARDEE TYPES FOR COMPETITIVE AWARDS

- ▶ Nonprofit Entities – No CDA Approval Required
- ▶ For-Profit Entities – CDA Approval Required

AWARDING TO A FOR-PROFIT

CDA approval is necessary for
awarding to a for-profit entity

”

22 CCR 7362(a); CDA Standard Agreement, FY 2017-18, Exhibit D, Article V, I

AWARDING TO A FOR-PROFIT TIPS

Send the following items to CDA for review and approval prior to the award:

- ▶ The RFP issued by the AAA
- ▶ All submitted proposals
- ▶ All evaluation documentation
- ▶ Rationale for proposal selection

22 CCR 7362(a); CDA Standard Agreement, FY 2017-18, Exhibit D, Article V, I

NONCOMPETITIVE AWARDS

[SCOPE & DELIVERABLES; TERMS & CONDITIONS]

22 CCR 7360

SINGLE SOURCE

Service/program is only available from a single source

22 CCR 7360(a)(1)

SINGLE SOURCE TIPS

- ▶ Review applicable laws and requirements
- ▶ It is necessary to maintain the following documentation:
 - ▶ Procurement policy at time of solicitation
 - ▶ Publicity methods
 - ▶ RFP documents

22 CCR 7360(a)(1)

URGENT NEED/EMERGENCY

An urgent public need or emergency that will cause a delay or disrupt services

22 CCR 7360(a)(2)

URGENT NEED/EMERGENCY TIPS

- ▶ Review applicable laws and requirements
- ▶ It is necessary to maintain the following documentation:
 - ▶ Letter showing the service provider terminated
 - ▶ Contract amendment if existing provider is covering the service area
 - ▶ If emergency, written documentation from governmental entity

INADEQUATE RESPONSE

Factors that may cause an inadequate response:

- ▶ Lack of publicity
- ▶ Requirements too restrictive
- ▶ Insufficient timeframe for submission of proposals
- ▶ Unreasonable delivery or performance requirements

INADEQUATE RESPONSE TIPS

- ▶ Review of RFP process
- ▶ It is necessary to maintain the following documentation:
 - ▶ Procurement documents and policy at time of solicitation
 - ▶ Publicity methods
 - ▶ List of organizations RFP was distributed to and/or sources contacted

CDA AUTHORIZATION

The awarding agency (CDA) authorizes noncompetitive awards due to special circumstances

GOVERNMENT AGENCY

A noncompetitive award is allowable if all of the following applies:

- ▶ The AAA is a government entity
- ▶ Prospective contractor is a government entity
- ▶ The goods or services to be procured will result in efficiency and economy

GOVERNMENT AGENCY TIPS

- ▶ Review applicable laws and requirements
- ▶ It is necessary to maintain documentation of the analysis supporting the decision that efficiency and economy will result

HELPFUL TIPS



HELPFUL TIPS

- ▶ Review applicable laws and regulations
- ▶ Review CDA's Contract Summary of Changes every year for updates to laws and requirements
- ▶ Develop written policies and procedures

MORE HELPFUL TIPS

- ▶ Discuss performance goals and expectations with service providers
- ▶ Use a checklist for contract requirements
- ▶ Boost communication between AAA staff
- ▶ Consult with CDA

QUESTIONS



“Knowing is not enough; we must apply. Being willing is not enough; we must do.”

-Leonardo da Vinci

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THANK YOU!